STATE OF CALIFORNIA CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Permit 20433 (Application 29027)

James R. Yurchenco and Amy Lauterbach

ORDER REVOKING PERMIT

SOURCE:

Two Unnamed Streams tributary to Nicasio Creek

COUNTY:

Marin

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

WHEREAS:

You are hereby notified that, pursuant to sections 1410-1410.2 of the California Water Code, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), is revoking Permit 20433 because the Permittees have failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 20433 and have not made beneficial use of the water in accordance with the permit, the Water Code, and the State Water Board's regulations.

The revocation is based upon the following facts, information and conclusions:

The State Water Board issued Permit 20433 on March 8, 1990. The permit authorizes the collection of 4.6 acre-feet per annum to storage from two unnamed streams tributary to Nicasio Creek from December 1 of each year to March 31 of the succeeding year. The maximum rate of diversion to offstream storage shall not exceed 0.25 cubic foot per second.

The permit requires that construction work be completed by December 31, 1993, and that the water be applied to the authorized use by December 31, 1994.

- A. PERMITTEES HAVE FAILED TO COMMENCE, PROSECUTE WITH DUE DILIGENCE, AND COMPLETE THE WORK NECESSARY TO APPROPRIATE WATER UNDER THE PERMIT
 - Permit 20433 was issued to Joe Wahnsiedler and Helene Robertson (original Permittees) on March 8, 1990. Division records show that the original Permittees began construction in 1990. (1990 Progress Report by Permittee.)
 - A 1992 Progress Report by Permittee indicated that 70 percent of the pond construction had been completed, but water use had not commenced. No further progress reports were submitted.
 - 3. On July 24, 2000, the Division re-assigned Permit 20433 from the original Permittees to James R. Yurchenco and Amy Lauterbach (Permittees). The Division requested information on whether the project had been fully developed.

- 4. During a telephone conversation on July 28, 2000, the Permittees informed the Division that the pond had not been constructed.
- 5. On September 18, 2000, the Permittees filed a petition dated September 6, 2000 with the State Water Board requesting an extension of time. The petition did not state the length of time extension requested or when water would be fully used. The petition stated that construction would begin within three to four years. The petition stated that no water had been used.
- 6. The Division's January 31, 2001 letter regarding the petition advised the Permittees that the reservoir should not be built until a time extension was approved.
- The petition was noticed on February 16, 2001. The Tomales Bay Association (Tomales Bay) and the Inverness Association protested the petition. The Tomales Bay protest is unresolved.
- 8. Environmental documents required pursuant to the California Environmental Quality Act (CEQA) have not been prepared for the time extension petition.
- 9. Permittee's time extension petition cannot be approved without preparation of environmental documents required by CEQA and resolution of the outstanding protest. Therefore the original deadline to complete application of water to beneficial use remains effective. Permittees failed to complete application of water to beneficial use by the December 31, 1994 deadline, and therefore have not made full beneficial use of the water as contemplated in the permit and in accordance with the Water Code rules and regulations of the State Water Board.
- 10. Permittee's January 27, 2004 letter advised the Division that Permittees had never diverted water.
- 11. The Division's February 21, 2007 letter advised Permittees that Division staff intended to prepare a Notice of Proposed Revocation and were given 30 days to submit any information that they would like taken into consideration. The Division did not receive a response.
- 12. On August 19, 2008, the Division issued a Notice of Proposed Revocation for Permit 20433. Permittees were advised that if they did not request a hearing within 15 days of receipt of the Notice of Proposed Revocation, Permit 20433 would be revoked without further notice. The Division did not receive a request for a hearing.
- B. BASED ON THE ABOVE FACTS AND INFORMATION, THE DIVISION CONCLUDES THAT CAUSE EXISTS FOR THE REVOCATION OF PERMIT 20433 PURSUANT TO WATER CODE SECTION 1410, SUBDIVISION (a) BECAUSE:

Permittees have failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 20433 and have failed to apply to beneficial use all or part of the water authorized for appropriation as contemplated in the permit and in accordance with the Water Code and the regulations of the State Water Board.

THEREFORE:

It is ordered that Permit 20433 is hereby revoked by the State Water Board pursuant Water Code section 1410, and the water is declared to be subject to appropriation. This revocation may not result in additional water being available for new appropriations if there are applicable restrictions due to past State Water Board decisions regarding water availability.

STATE WATER RESOURCES CONTROL BOARD

Victoria A. Whitney for

Deputy Director for Water Rights

Dated:

FEB 1 8 2009

STATE OF CALIFORNIA WATER RESOURCES CONTROL BOARD DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20433

Application 29027 of Joe Wah		Robertson						(over)
38 Austin Avenue, San Anselmo, CA 94960								<u> </u>
filed on May 12, 1987, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.								
Permittee is hereby authorized to divert	and use water as fo	llows:						
1. Source:	Tributary to:							
Two Unnamed Streams	Nicasio Creek thence							
	Lagunitas Creek thence							
Tomales Bay								
	·							
,								
								
2. Location of point of diversion:		40-acre subdivision of public land survey or projection thereof		Sectio	Town- ship	Range	Base and Haridan	
DIVERSION TO OFFSTREAM STORAGE BY CALIFORNIA COORDINATES, ZONE 3 NORTH 589,750 FEET AND RAST 1,347,425 FEET		SEK of SWK		17	3N	8N	МО	- .
STORAGE AND REDIVERSION NORTH 589,600 FEET AND EAST 1,347,525 FEET		SEG OF SEG		17	38	8W	ЖĐ	_
								- -
								- -
County of Marin *projected								
3. Purpose of use:	4. Place of use:		Section	Town- Ship	Range 1	Base and foridan	Acre	_
STOCKWATERING	UNNAMED RESERVO	IR WITHIN	17	3N	8W	MD CM		
								-
								; •
			,					_

The place of use is shown on map on file with the State Water Resources Control Board.

WRCB 14 (6-89)

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 4.6 acre-feet per annum to be collected from December 1 of each year to March 31 of the succeeding year.

(0000005)

The maximum rate of diversion to offstream storage shall not exceed 0.25 cubic foot per second.

(000005J)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

7. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced (0000007) and prosecuted, this permit may be revoked.

8. Construction work shall be completed by December 31, 1993.

(8000008)

9. Complete application of the water to the authorized use shall be made by December 31, 1994.

(0000009)

10. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

(0000010)

11. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

12. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

13. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through (0000013) the control of waste discharges.

- 14. Permittee shall comply with following provisions which are derived from the agreement between permittee and Marin Municipal Water District executed on November 24, 1987 and filed with the State Water Resources Control Board:
- (1) This permit is specifically subject to the prior right of the Marin Municipal Water District under appropriation issued pursuant to Application 17317. During any water year (October 1 September 30) when Nicasio Reservoir does not fill due to insufficient inflow and thereafter until Nicasio Reservoir does fill, permittee shall not withdraw any water collected to storage under this permit during the then current collection season for use outside of the reservoir except for emergency fire control purposes. (000T001)
- (2) Permittee shall install and properly maintain in the reservoir a staff gage, satisfactory to the State Water Resources Control Board, for the purpose of determining water levels in the reservoir.

Permittee shall record the staff gage reading on or about October 1 of each year and on or about April 1 of each following year. Such readings, as verified by a designated representative of Marin Municipal Water District, shall be supplied to the State Water Resources Control Board with the next progress report submitted to the Board by permittee.

Permittee shall allow a designated representative of the Marin Municipal Water District reasonable access to the reservoir for the purpose of verifying staff gage readings and determining water levels in the reservoir.

(0070047) (0100047)

- (3) Except as hereinafter set forth, permittee shall within seven days of written or verbal request by the District release stored water at the maximum practicable rate to flow downstream into Nicasio Reservoir up to the total amount collected to storage during the then current or immediately concluded collection season or until the storage rights at Nicasio Reservoir are satisfied, provided that:
 - a) a water storage emergency has been declared by the District pursuant to Water Code Section 350 et seq. or 71640 et seq., and,
 - b) hydraulic continuity from permittee's point of diversion to Nicasio Reservoir either exists or can reasonably be expected to be established by such release or stored water.

Permittee shall not be obligated to release 1) water diverted to storage in the reservoir under other rights or 2) water in the reservoir below the previous October 1 staff gage reading.

Verbal requests by the District for release of stored water will be immediately confirmed in writing.

(0000051)

Inclusion in this permit of certain provisions of the referenced agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.

(0430800) (0000024)

15. After the initial filling of the storage reservoir, permittee's right under this permit extends only to water necessary to keep the reservoir full by replacing water beneficially used and water lost by evaporation and seepage, and to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the authorized diversion season.

(0000041)

Permit 20433

16. Permittee shall install and maintain an outlet pipe of adequate capacity as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipe or alternative facility to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the outlet pipes or alternative facilities have been installed. Evidence shall include photographs showing and completed works or certification by a registered Civil or Agricultural Engineer. (0050043)

7-24-00 aso'd to James R. Yurchenco : amy Lauterbach

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any sights granted or acquired under the provisions of this division (of the Water Code), or sepect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision (of the Water Code).

Dated: | MARCH 0 8 1990

STATE WATER RESOURCES CONTROL BOARD

Chief Division of Water Rights

WR 14-2 (1-79)

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